

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

COLLIN MITCHELL OWENS,

Petitioner,

v.

GUY L. HALL,

Respondent.

FRANCESCA FRECCERO  
Assistant Federal Public Defender  
101 SW Main Street  
Suite 1700  
Portland, OR 97204

Attorney for Petitioner

HARDY MYERS  
Attorney General  
LYNN DAVID LARSEN  
Assistant Attorney General  
Department of Justice  
1162 Court Street NE  
Salem, OR 97301

Attorneys for Respondent

Civil No. 06-425-AS

FINDINGS AND RECOMMENDATION

ASHMANSKAS, Magistrate Judge.

Petitioner, an inmate at the Santiam Correctional Institution, brings this habeas corpus action pursuant to 28 U.S.C. § 2254. For the reasons that follow, the Petition for Writ of Habeas Corpus should be DENIED, and this action should be DISMISSED.

Petitioner challenges his May 2000 state conviction for Attempted Kidnaping in the Second Degree. It is uncontested that Petitioner's habeas corpus petition was filed beyond the one-year limitation period set forth in 28 U.S.C. § 2244(d).

Petitioner acknowledges this action is untimely, but states that "[l]ike many other Oregon prisoners, [he] incorrectly believed that, as long as he pursued his state remedies within the time period permitted under state law, then filed his federal habeas petition within one year, he would not run afoul of the statute of limitations. . . ." Petitioner argues that to avoid offending the Suspension Clause, this court should equitably toll the limitations period during the two years in which the State of Oregon allows prisoners to seek state post-conviction relief.

Petitioner concedes that the Ninth Circuit Court of Appeals already rejected this argument. Ferguson v. Palmateer, 321 F.3d 820, 823 (9th Cir.), cert. denied, 540 U.S. 924 (2003). This court is bound by the Ninth Circuit's ruling. Hasbrouck v.

Texaco, Inc., 663 F.2d 930 (9th Cir. 1981), cert. denied, 459 U.S. 828 (1982). Accordingly, the limitations period contained in § 2244(d), as applied to Oregon prisoners, does not constitute an unconstitutional suspension of the writ of habeas corpus, and the Petition for Writ of Habeas Corpus should be dismissed as untimely.

#### **RECOMMENDATION**

For these reasons, I recommend that the Petition for Writ of Habeas Corpus be DENIED, and that judgment of DISMISSAL be entered.

#### **SCHEDULING**

The above Findings and Recommendation are referred to a United States District Judge for review. Objections, if any, are due May 3, 2007. If no objections are filed, review of the Findings and Recommendation will go under advisement that date.

A party may respond to another party's objections within 10 days after service of a copy of the objections. If objections are filed, review of the Findings and Recommendation will go under advisement upon receipt of the response, or on the latest date for filing a response.

DATED this 19 day of April, 2007.

\_\_\_\_\_  
 /s/ Donald C. Ashmanskas  
 Donald C. Ashmanskas  
 United States Magistrate Judge